

**No. 9(1)81-8Lab.8960.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Continental Device India Ltd., Mathura Road, Faridabad.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.**

**Reference No. 436 of 1978**

*between*

**SHRI MOHMED DAUD KHAN; WORKMAN AND THE MANAGEMENT OF M/S.  
CONTINENTAL DEVICE INDIA LTD., MATHURA ROAD, FARIDABAD.**

*Present:—*

Shri R.C. Sharma, for the workman.

Shri K.P. Aggarwal, for the management.

### **AWARD**

By order No. ID/FD-I/55-78/42124, dated 18th September, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Continental Device India Ltd., Mathura Road, Faridabad and its workman Shri Mohmed Daud Khan, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the dismissal of Shri Mohmed Daud Khan was justified and in order ?  
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 13th February, 1979:—

1. Whether the espousal by a substantial number of workmen is necessary for this reference ?
2. If issue No. 1 is proved, whether the dispute has been espoused by a substantial number of workmen ? If not, to what effect ?
3. Whether the domestic enquiry is proper and fair ?
4. Whether the termination of services of the workman was justified and in order ?
5. If not, to what relief they are entitled ?

Issue No. 3 was treated as preliminary and after recording of the evidence of the parties this issue was decided in favour of the management and the case was fixed for the evidence of the parties on the remaining issues. The management produced Shri R. Sahni Project Manager as MW-2 and the workman examined himself on another issue and closed his case. Arguments were heard. Now I give my finding issuewise:—

**Issue No. 1.**—No evidence was led by the parties on this issue. I find that the reference is between the workman Shri Mohmed Daud Khan and the management of the respondent company. The matter under reference is “whether the dismissal of Shri Mohmed Daud Khan was justified and in order ? Demand notice is on behalf of the concerned

workman. His address is C/o CITU office. Objection taken by the management about espousal of the case is misconceived. It squarely falls under section 2-A of the Industrial Disputes Act, therefore, this issue is decided against the management.

**Issue No. 2.**—On the finding of issue No. 1 there is no necessity to decide this issue.

**Issue No. 2.**—MW-2 stated that he passed dismissal order copy Ex: M-7 on receipt of enquiry finding. He considered the enquiry report and past service record of the workman before passing dismissal order. In cross examination he stated that he was in the management for the last 10 years. There was no General Manager in the factory and he was looking after that work. He had orders from the Managing Director to look after the work of General Manager. He was designated as General Manager in the letter. He admitted that in Ex. M-7 he was shown as Project Manager because that may be transitory period. Shri Madan had left the post of General Manager during these days. No director of the factory regularly sits in the office of the factory. He further stated that he was designated as General Manager in addition of his being as Project Manager.

WW-1 stated that he was President of the union from the very beginning. The management removed from service 10-11 workers who were office bearers of the union. Shri S.S. Madan was General Manager and he remained in the factory after 4-5 days of his dismissal. He had raised a demand for increase in wages. The management felt annoyed and dismissed him. Shri Gurprit Singh was Director Incharge of the factory and he some times attend the factory. No letter of appointment was given to him. In cross examination he denied that Ex. M-4/7 appointment letter was given to him and his signature appear at mark A. He also denied that he was issued warning letter Ex. M-4/2 and his signature appear at mark A in token of his receipt. He admitted it as correct that at the time of his dismissal there was a union in the factory and no office bearer of the union was removed from service. He knew only the names of two workmen who were removed from service.

The learned representative for the management argued that after findings on domestic enquiry only matter of punishment remained. He further argued that proviso to section 11-A of the Industrial Disputes Act barred recording of any fresh evidence. He cited 1981 Lab. I.C. page 93, 1979 Lab., I.C. page 102, 1981 I LLJ page 57. The contention of the learned representative so far section 11-A is concerned is correct but in this case evidence was allowed on the remaining issues, however, that part of evidence which relates to the enquiry proceedings its finding etc. is not to be considered by me. The learned representative for the management on the matter of punishment cited 1980 I LLJ page 425(S.C.), 1973 I LLJ page 280. On the other hand the learned representative for the workman argued that the workman was not issued 2nd show cause notice before passing dismissal order. He further argued that the order was signed by the Project Manager and no proof of delegation of power was given. The representative for the management argued that there was no provision of 2nd show cause notice in the Standing Orders Ex. M-6 of the company. He cited 1981 Lab. I.C. 479, 1981 I. LLJ page 480, 1978 LLJ page 322, 1968 I., LLJ, page 571 and also argued that the workman was victimised for his union activities. In reply the learned representative for the management argued that victimisation was a matter of proof. No such evidence was led by workman to prove as to how he was victimised and the reason of such victimisation. He cited 1969 I. LLJ, page 291 and 1975 Lab., I.C. page 1520.

I have considered the points raised by the parties and find that the workman was chargesheeted for:—

1. Wilfull dealying works.
2. Arrogant behaviour and refusal to work.
3. Sitting and gossiping during duty hours.
4. Rude reply to superiors.

5. Not attending jobs seriously, loitering and idling away time, according to Ex. M-4/5. The chargesheet was issued by the Production Incharge Shri J.S. Sethi. The Enquiry Officer held the workman guilty. In 1973 I. LLJ, page 278 (S.C.) in which it is held that once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation." In 1980 I, LLJ page 425 it is held as under:—

"Motive of the workman in doing the act attributed to him may not be quite material. Once refusal to do his work and disobedience to the orders of the superiors are admitted or proved, the seriousness of the charges will not be mitigated with reference to the motive with which the workman behaved."

It is further held as under :—

"The length of service of a workman is not relevant in the imposition of punishment for proved misconduct. If a worker has put in a longer service, he cannot be taken to be licensed to commit misconduct".

I have considered the contention of the learned representative for the workman about signing of dismissal letter. I find that the chargesheet was also issued by the same Manager who issued dismissal order. It is into evidence that he was performing the duties of General Manager in addition to his own duties on the orders of the Managing Director. No plea about the authority to issue chargesheet and dismissal order was taken by the workman in his pleadings. As regards the contention about the 2nd show cause notice no relevant clause of the Standing Orders was referred where there was such provision. In 1969 Lab. I.C. page 837 it is held by the Supreme Court at page 847, that "it was unnecessary to import the necessity of 2nd show cause notice in cases of non-civil servant where Article 311 of the Constitution was not applicable." As regards victimisation no evidence was forthcoming to prove the connection of the learned representative for the workman. It was always a matter of proof as held by their Lordships of the Supreme Court in 1963, 1 LLJ page 291. I have also considered the quantum of punishment awarded to the delinquent workman. The charges undoubtedly speak of misconduct of refusal to work and arrogant rude behaviour. The workman are employed and paid for continuation of industrial activities and production of goods by the management and refusal to work hits the basis of the activity. I do not find any ground to interfere in the punishment given by the management. I, therefore, decide this issue in favour of the management.

**Issue No. 5.**—The workman is not entitled to any relief.

While answering the reference, I give my award that the dismissal of the workman was justified and in order. There is not entitled to any relief. I order accordingly.

Dated the 16th July, 1981.

M. C. BHARDWAJ,  
Presiding Officer, Industrial Tribunal,  
Haryana, Faridabad.

No. 692, dated 25th July, 1981.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.